# IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION ( BAIL ) NO. 371 OF 2006

MR. ANANT YASHWANT VOLVOIKAR(PRESENTLY IN JUDICIAL CUSTODY) ....Appellant

Versus

STATE OF GOA THROUGH THE P.I. CALANGUTE POLICE STATION, CALANGUTE GOA. ....Respondent

Mr. S. D. Lotlikar, Senior Advocate with Mr. Ryan Menezes, Advocate for the Applicant/Accused.

Ms. Winnie Coutinho, Public Prosecutor for the State.

Coram:- N. A. BRITTO, J.

Date:- 17th November, 2006

ORAL ORDER

The applicant herein is an accused, who has been denied bail four times by the learned Sessions Judge, Panaji, and as such, has approached this Court for bail.

2. The applicant was arrested on 12.07.2006, in Crime No. 48/06 of Calangute Police Station under Section 302, 120 (b) I.P.C. and Sections 3 read with Sections 25, 27 of the Arms Act, 1958.

3. The applicant, one Sunil Thukaral, a cousin of the deceased Praveen Grover and the deceased, were Directors of Candolim Developers Private Limited, who owned Perola Do Mar Resort situated at Candolim. It appears that there were disputes and differences amongst the said three Directors in connection with the running of the said Perola Do Mar Resort, Candolim. On 11.07.2006, at about 18.40 hours, the said Praveen Grover was shot dead at the said resort and a complaint came to be lodged

by one Raviraj Prabhu, pursuant to which the crime came to be registered. The applicant and the said Sunil Thukaral, have been strongly suspected by the family members of the deceased as the persons behind the said murder, of having engaged a contract killer to murder the deceased.

4. The applicant has been in custody since 12.07.2006 and as already stated, four applications for bail filed on his behalf have been rejected by the learned Sessions Judge, Panaji. It appears that the Investigating Agency is desirous of subjecting the accused to Brain Finger Testing (narco)and Polygraph analysis and have approached the Forensic Science Laboratory, Ghandinagar, Gujarat, and in that connection, have made an application on 30.10.2006 to the learned Sessions Judge to grant permission to carry out the said tests of both the accused who have been arrested and the said application was posted for hearing on 15.11.2006 and which has now been adjourned to be heard on or about 21st instant.

5. The applications for bail were rejected by the learned Sessions Judge, essentially because it was thought that the Investigating Agency should be given sufficient time to verify the complicity of the accused in committing the offence which was of serious nature. The Investigating Agency has also now filed chargesheet against the applicant and the said Sunil Thukaral. On 09.10.2006, the case bearing C.C. no. 174/S/06/A has been committed to the Court of Sessions and now bears Sessions Case No. 24/2006. On behalf of the Investigating Agency, the learned Public Prosecutor has placed reliance on the case of State of Maharashtra v. Ritesh (AIR 2001 S.C. 1310) and has submitted that since the chargesheet has now been filed against the said accused persons, it is desirable that the applications for bail are first decided by the Sessions Court. The Apex Court in the aforesaid decision has stated that once the final chargesheet has been filed in the trial Court, the High Court under normal circumstances, should have permitted the respondents to get a verdict of his innocence or involvement from that Court under Chapter XVIII of the Code of Criminal Procedure. No exceptional ground has been made out, in the instant case, to depart from such a usual established procedure.

6. As already stated, all the four bail applications were moved before the learned Sessions Judge, at the time when investigations of the case were pending and they were disposed of essentially to facilitate further investigations by the police. It does not appear that the case of the applicant/accused has been considered by the learned Sessions Judge on merits of the same, considering the material so far collected against the applicant/accused. It is certainly desirable that the application of the accused should be decided first on its merits by the learned Sessions Judge, before the same is decided by this Court.

7. With the above observation, the application is hereby dismissed with liberty as aforesaid. Needless to observe, any observations made herein, will not come in the way of deciding the application for bail to be filed by the accused on merits of the same.

Expedite authenticated copy.

N. A. BRITTO, J.

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